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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly  
situated,

Plaintiff,

v.

SUTTELL & ASSOCIATES;  
MIDLAND FUNDING, LLC; MARK  
T. CASE, and JANE DOE CASE,  
husband and wife, KAREN HAMMER  
and JOHN DOE HAMMER

Defendants.

Case No.: CV-09-251-EFS

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S STATEMENT OF  
FACTS RE: MOTION FOR PARTIAL  
SUMMARY JUDGMENT RE:  
ATTORNEY FEES

1. Suttell Defendants' Fact #1. Disputed. Midland Funding, LLC denies

that it hired Suttell & Hammer, LLC. (Ct. Rec. 73-1). Plaintiff

disputes that the alleged debt originated from First Consumer National

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S LR 56.1 STATEMENT OF  
FACTS - 1

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1 Bank. Defendant has not produced any competent, reliable or  
2 admissible evidence identifying FCNB as originating the account. The  
3 alleged obligation of Kelli Gray originated from a transaction in goods  
4 between Kelli Gray and Spiegel's website. (Ct. Rec. 54).

5  
6 2. Suttell Defendants Fact # 2. Admit.

7  
8 3. Suttell Defendants' Fact # 3. Admit.

9 4. Suttell Defendants' Fact # 4. Disputed. Plaintiff disputes that analysis  
10 is done to determine the statute of limitations from the date of last  
11 payment. (Ct. Rec. 42-1, p. 34-37; additional facts in dispute to be  
12 supplemented once the Karen Hammer and Tu Uyen Huynh  
13 deposition transcripts are available). Admit the remaining portions of  
14 Suttell Defendants Fact # 4.  
15

16 5. Suttell Defendants' Fact # 5. Disputed. The demand letters are  
17 generated by automated computer procedures. (Ct. Rec. 42-1, p. 24-  
18 27; additional facts in dispute to be supplemented once the Karen  
19 Hammer and Tu Uyen Huynh deposition transcripts are available).  
20

21 6. Suttell Defendants' Fact # 6. Disputed. The Suttell Defendants do not  
22 request the "appropriate" documentation. *Id.* The Suttell Defendants  
23 do not request documentation from their "client." (Ct. Rec. 42-1, p.  
24 32; (Ct. Rec. 73-1).  
25

1 7. Suttell Defendants' Fact # 7. Admit.

2 8. Suttell Defendants' Fact # 8. Disputed. Suttell's Summonses and  
 3 Complaints are not "created" by "paralegals." The Summaons and  
 4 Complaint are "printed" from an automated computer process. (Ct.  
 5 Rec. 42-1, p. 24-27; additional facts in dispute to be supplemented  
 6 once the Karen Hammer and Tu Uyen Huynh deposition transcripts  
 7 are available) Suttell's Summons and Complaints are generated by  
 8 automated computer procedures. *Id.* The "standardized" Attorney fees  
 9 are requested in all cases except less than one percent (1%). *Id.*

12 9. Suttell Defendants' Fact # 9. Admit.

13 10. Suttell Defendants' Fact # 10. Disputed. The file is automatically  
 14 monitored by JST computer software. (Ct. Rec. 42-1, p. 24-27;  
 15 additional facts in dispute to be supplemented once the Karen  
 16 Hammer and Tu Uyen Huynh deposition transcripts are available). A  
 17 "paralegal" does not generate a default packet. *Id.* A "paralegal" does  
 18 not obtain an affidavit from the client. *Id.* The loan documents do not  
 19 pertain to the file. *Id.* The purported loan documents are not received  
 20 with the affidavit. *Id.* The chain of title documentation is not furnished  
 21 by the client. *Id.* Denied. Suttell's Summonses and Complaints are not  
 22 created by "paralegals." *Id.* Suttell's Summons and Complaints are  
 23  
 24  
 25

1 generated by automated computer procedures. *Id.* Attorney fees are  
2 requested in all cases except less than one percent (1%). *Id.*

3  
4 11.Suttell Defendants’ Fact # 11. Admit.

5 12.Suttell Defendants’ Fact # 12. Denied. Suttell attorneys are required to  
6 travel to the appropriate court when the appropriate court is King  
7 County.

8  
9 13.Suttell Defendants’ Fact # 13. Disputed. Suttell did not conduct a  
10 historical analysis to determine its fees. *See* (Ct. Rec. 42-1). Despite  
11 repeated requests that Suteell answer the discovery requiring  
12 production of this alleged “analysis” Suttell has not produced.  
13  
14 Admitted that, Suttell generated a standardized fee to be requested in  
15 default pleadings. Admitted that, Suttell determined that \$650.00 was  
16 a reasonable attorney fee for debt collection cases in which it obtained  
17 a default judgment.; additional facts in dispute to be supplemented  
18 once the Karen Hammer and Tu Uyen Huynh deposition transcripts  
19 are available). Suttell did apply the RPC 1.5 factors, loadstar or  
20 consider *Mahler*, in determining \$650 was a reasonable attorney fee.  
21  
22 *Id.*

23  
24 14.Suttell Defendants’ Fact # 14. Disputed. The local rules Suttell refers  
25 to are primarily rules for courts of limited jurisdiction. Suttell does not

1 file cases in courts of limited jurisdiction. (Ct. Rec. 46-1). Admitted  
2 that, Suttell's usual and standard procedure is for Suttell counsel to  
3 request \$650.00 in default pleadings. Suttell request a \$650.00  
4  
5 standardized attorney fee even where another amount is specified by  
6 local rule.

7 15.Suttell Defendants' Fact # 15. Admit.

8 16.Suttell Defendants' Fact # 16. Admit.

9  
10 Dated this the 11<sup>th</sup> day of August, 2010.

11  
12 *Michael D. Kinkley P.S.*

13 s/\_\_\_\_\_  
14 s/Michael D. Kinkley

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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of August, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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